

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Investigation on the Commission's own motion into the operations, practices, and conduct of Pacific Bell Wireless LLC dba Cingular Wireless, U-3060, U-4135 and U-4314, and related entities (collectively "Cingular") to determine whether Cingular has violated the laws, rules and regulations of this State in its sale of cellular telephone equipment and service and its collection of an Early Termination Fee and other penalties from consumers.

Investigation 02-06-003  
(Filed June 6, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING  
ON OUTSTANDING MOTIONS TO FILE UNDER SEAL  
(MOTIONS FILED SEPTEMBER 25, 2002;  
DECEMBER 6, 2002; AND APRIL 25, 2003)**

**Summary**

This ruling resolves three outstanding motions to file allegedly confidential documents under seal. In each instance, the documents were tendered under seal in support of procedural motions filed concurrently with the motions for leave to file under seal. The procedural motions were resolved by prior Administrative Law Judge (ALJ) rulings. Two other motions to file under seal have been withdrawn and require no action by the Commission; the two motions are identified in this ruling.

**Discussion**

The following three motions seek leave to file confidential documents under seal.

- September 25, 2002 *Joint Motion of Utility Consumer Action Network and the Consumer Protection and Safety Division to Submit Under Seal Declarations Supporting Motion for Reconsideration.*

This motion seeks leave to file under seal the declarations of Lee Biddle, for Utility Consumers' Action Network (UCAN) and Christopher Witteman (Witteman), for the Commission's Consumer Protection and Safety Division (CPSD). The declarations were tendered under seal in support of the parties' motion for reconsideration of the ALJ's July 29, 2002 ruling on their previously filed motion to compel discovery. In light of the Commission's interim decision in this proceeding,<sup>1</sup> subsequent confidentiality rulings by the ALJ and the Assigned Commissioner,<sup>2</sup> and following consultation with Cingular Wireless (Cingular), UCAN and CPSD have filed, as a joint declaration, unredacted versions of those declarations and two of the exhibits attached to them, Exhibits 9 and 10. Thus, the motion to file under seal now pertains only to Exhibits 1 through 8 to the declarations.<sup>3</sup>

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<sup>1</sup> See Decision (D.) 02-10-061, pp. 4-7, slip op., which discusses the Commission's General Order 66-C.

<sup>2</sup> See, for example, the May 12, 2003 *Joint Ruling of Assigned Commissioner and Administrative Law Judge on Confidentiality of Specified Exhibits (Joint Ruling on Confidentiality)*. I made other rulings on confidentiality at the second prehearing conference held in this proceeding on March 27, 2003.

<sup>3</sup> UCAN's August 28, 2003 letter to Martin Nakahara of the Commission's Docket Office, which was served on the service list for this proceeding, confirms the revised status of the request and states that Cingular has consented to the public filing of the declarations.

On October 16, 2003, Cingular filed a response,<sup>4</sup> which (1) argues that the entirety of Exhibits 1 through 8 to the declarations should be filed under seal because the documents in those exhibits are not part of the record of this proceeding, but then (2) essentially waives that claim and identifies with specificity the information which it seeks to have redacted if the Commission requires public versions of the exhibits to be filed. The response includes, as Exhibit A, the declaration of James Jacot, Regional Vice President, Network Operations for Cingular's West Region, and as Exhibit B, copies of Exhibits 1 through 8 to the declarations, with limited redactions to Exhibits 1, 7 and 8.

While the documents at issue are not part of the evidence in this proceeding, they are part of the record, since they have been submitted in support of a motion filed in this proceeding. Cingular does not explain why the documents should be filed under seal in their entirety, except that they were provided to CPSD pursuant to Pub. Util. Code § 583. This alone does not provide grounds for a protective order. However, Cingular does make a case for narrowly redacting Exhibits 1, 7 and 8.

Exhibit 1 consists of two pages from the minutes of a meeting dated March 13, 2002. Cingular proposes to redact one telephone number on the page bearing Bates stamp number (50) 1466. This telephone number is used for internal purposes and Cingular states that "[t]he public disclosure of such number would cause harm to Cingular and/or individuals employed by Cingular." (Response, p. 3.) There is no public interest in divulging the telephone number and it should be filed under seal.

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<sup>4</sup> Cingular filed an errata to its response on October 30, 2003.

Exhibit 7 contains references to certain of Cingular's internal network performance measures, specifically, to implementation of dedicated time slots. The Jacot declaration states that this information is proprietary and that:

If revealed, Cingular's competitors will have access to valuable information about the operations of Cingular's network. It would also enable Cingular's competitors to anticipate and react to network operations decisions made by Cingular relating to the number and timing of the dedicated time slots it implements. Cingular's competitors have not publicly released this information and Cingular would have no similar opportunity to use the same information from its competitors. (Jacot Declaration, Paragraph 4.)

Cingular makes a reasonable case that release of this information would place it at an unfair business disadvantage. The redacted information should be filed under seal.

Exhibit 8 provides detailed information about Cingular's network sharing agreement with VoiceStream, including information about the structural and operational organization of the agreement. The Jacot declaration states that Cingular is under a contractual agreement with VoiceStream not to disclose the information Cingular seeks to protect and that:

Disclosure of detailed information relating to the VoiceStream agreement would unfairly allow Cingular's competitors to use these operational structures developed by Cingular and VoiceStream to develop their own network sharing agreement ... both Cingular and VoiceStream would suffer immediate harm by the disclosure of such information. (Jacot Declaration, Paragraph 5.)

Cingular makes a persuasive case that release of this information would place it at an unfair business disadvantage. The redacted information should be filed under seal.

- December 6, 2002 *Motion of Consumer Protection & Safety Division to Compel Production of Specific Maps and Coverage Information, et al.*

This motion seeks leave to file under seal the entirety of CPSD's motion to compel discovery, the Witteman declaration tendered in support, and 15 attachments to the declaration. On August 20, 2003, CPSD filed a public version, which was prepared following consultation with Cingular and after issuance of the confidentiality rulings by the ALJ and the Assigned Commissioner referenced above. On September 19, 2003, CPSD amended the public version via a supplemental filing. The motion to file under seal now pertains only to the following exhibits to the Witteman declaration: Exhibit 2 (five pages); Exhibit 3; Exhibit 11 (one page); Exhibit 12; Exhibit 13; and Exhibit 15 (two pages).<sup>5</sup>

Exhibit 2 is the prepared opening testimony of CPSD's expert witness Robert Zicker, now part of the record of this proceeding as evidentiary Exhibit 17 (the public version, with limited redactions on pages 17, 18, 21 and 22) and Exhibit 17-Confidential (the sealed version, containing the text redacted from Exhibit 17). CPSD's motion proposes to make the same redactions on pages 17, 18, 21 and 22 of Exhibit 2 to the declaration that have been made in Exhibit 17. This portion of the motion for leave to file under seal should be granted. Page 16 of Exhibit 2 to the declaration should not be filed under seal, since pursuant to

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<sup>5</sup> CPSD's September 19, 2003 supplemental filing, together with its August 21, 2003 letter to Martin Nakahara of the Commission's Docket Office (served on the service list for this proceeding), clarify and confirm the revised status of the request.

Cingular's waiver of confidentiality with respect to the text at issue, page 16 of Exhibit 17 has not been filed under seal.<sup>6</sup>

Exhibit 3 is a propagation map. Pursuant to the *Joint Ruling on Confidentiality*, which orders that such maps be filed under seal in the evidentiary record, Exhibit 3 to the declaration should be filed under seal.<sup>7</sup>

Exhibit 11 is the deposition of Kathleen Lee, an employee of Cingular and one of its witnesses in this proceeding. CPSPD proposes to redact the signal strength values at Lines 14, 15, 16 and 19 of page 47 of the deposition. The signal strength values are discussed in relation to Cingular's street level MapInfo, a propagation map, and would disclose the content of the map. Pursuant to the *Joint Ruling on Confidentiality*, which orders that similar maps be filed under seal in the evidentiary record, the identified signal strength values on page 47 of Exhibit 11 to the declaration should be filed under seal.<sup>8</sup>

Exhibit 12 consists of selected pages from Cingular's "Capital Expenditure Standards," marked "Revised June 12, 2001." The larger document is now part of the record of this proceeding as Attachment 4 to evidentiary Exhibit 17-Confidential, pursuant to the *Joint Ruling on Confidentiality*.<sup>9</sup> CPSPD's motion proposes to seal the selected pages as well. This request should be granted and Exhibit 12 to the declaration should be filed under seal.

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<sup>6</sup> See *Joint Ruling on Confidentiality*, Attachment A, p. 1.

<sup>7</sup> *Id.* at Attachment A, pp. 22-23.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Id.* at Attachment A, pp. 18-19.

Exhibit 13 consists of selected pages from a Cingular document bearing the title “North Region and South Region Commitments & Step by Step Process and Procedure.” The larger document is now part of the record of this proceeding as Attachment 2 to evidentiary Exhibit 17-Confidential, pursuant to the *Joint Ruling on Confidentiality*.<sup>10</sup> CPSD’s motion proposes to seal the selected pages as well. This request should be granted and Exhibit 13 to the declaration should be filed under seal.

Exhibit 15 consists of correspondence between counsel for CPSD and Cingular regarding discovery and includes responses by Cingular to a number of CPSD data requests. CPSD proposes to redact two pages, comprising copies of two emails, respectively dated January 2 and January 18, 2002, which were circulated among a number of Cingular employees and which report on the nature and potential causes of service problems experienced by an entity identified in the public version of the attachment as “Young’s Market.” The emails relate two kinds of information—details about the customer’s internal business practices and location-specific details about Cingular’s network configuration. Prior rulings in this proceeding, including the *Joint Ruling on Confidentiality*, decline to publicly disclose similar information in order to protect customer privacy on the one hand and Cingular’s competitive position, on the other. Consistent with these rulings, this request should be granted and these two (unnumbered) pages of Exhibit 13 to the declaration should be filed under seal.

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<sup>10</sup> *Ibid.*

- *April 25, 2003 Motion of Consumer Protection & Safety Division to Submit Under Seal Declaration Supporting Opposition to Cingular's Motion for Confidentiality*

This motion seeks leave to file under seal the Witteman declaration and the attachments to it, all of which were tendered as support for CPSD's April 25, 2003 opposition to Cingular's April 18, 2003 motion to maintain the confidential status of some of the documents received in evidence in this proceeding. On May 7, 2003, CPSD filed a public version of the declaration and Exhibit 2 to the declaration, both without redactions. Thus, CPSD's motion to file under seal now pertains only to Exhibits 1 and 3 to the Witteman declaration.

Exhibit 1 is the services agreement between Cingular and Telephia, Incorporated (Telephia), an entity with whom Cingular has contracted to perform drive tests and other kinds of wireless performance analysis. Telephia is not a party to this proceeding but made a special appearance at the September 5, 2002, law and motion hearing before ALJ Thomas to protect its business, proprietary and trade secret interests in certain documents CPSD sought to obtain through discovery, including the services agreement. In an oral ruling at that law and motion hearing, ALJ Thomas noted CPSD's stipulation to treat the services agreement confidentially, in accordance with Commission precedent that protects certain contracts between utilities and unregulated entities from public disclosure. ALJ Thomas determined that while only the pricing section of the service agreement and the appendices are entitled to protection as trade secrets, the entirety of the agreement should be produced under seal to CPSD in order to protect the business interests of Telephia. She also adopted a nondisclosure agreement, which required Telephia to produce documents to CPSD only (UCAN did not seek disclosure and is not entitled to the documents under the nondisclosure agreement). Consistent with the ALJ Thomas'



September 5, 2002 law and motion ruling, Exhibit 1 to the Witteman declaration should be filed under seal.

Exhibit 3 includes copies of a selection of documents produced to CPSD by Telephia under the nondisclosure agreement between those two parties. According to the Witteman declaration, the documents show comparisons of wireless carriers “on the basis of customer satisfaction, customers’ time on hold, primary reason for contacting carrier, market share, and other categories.” (Declaration, Paragraph 4.) However, since the comparative data has been redacted from the documents that CPSD seeks to file under seal, the documents appear to have been appended to the declaration merely to support CPSD’s contention that Telephia prepared information of this type for Cingular.

The headings on the documents track the descriptions in the Witteman declaration and what little else remains unredacted on each page provides no useful information about Cingular’s performance. What the information remaining on each page does show, sometimes in a limited manner, is Telephia’s format for organizing and presenting the collected data and, in some cases, the size of its customer sample.

On their face, the value to the public of disclosure of these redacted documents is extremely limited. The transcript of the September 25 law and motion hearing before ALJ Thomas reflects Telephia’s stated business interests in similar documents and the harm public disclosure could cause that unregulated company. Balancing the extremely limited value of public disclosure against the potential harm to Telephia, the Exhibit 3 to the Witteman declaration should be filed under seal.

The following motions for leave to file specified supporting documents under seal have been withdrawn and require no action by the Commission:

- December 4, 2002 *Motion of Pacific Bell Wireless, LLC d/b/a Cingular Wireless to File Responsive Pleading Containing Confidential Information Under Seal*
- December 16, 2002 *Motion to File Under Seal the Response of Cingular Wireless to Consumer Protection & Safety Division's Motion to Compel Production of Specific Maps and Coverage Information, et al.*

Cingular has withdrawn these related motions in separate notices, each filed June 20, 2003. Cingular has rescinded the confidentiality claims previously advanced regarding the responsive pleadings and has attached a public, unredacted version of each pleading to the respective notice.

**IT IS RULED** that:

1. As modified by the subsequent filings and letters identified in the body of this ruling, the September 25, 2002 joint motion of the Commission's Consumer Protection and Safety Division (CPSD) and Utility Consumers' Action Network (UCAN) to file under seal the declarations and attached exhibits submitted in support of its motion for reconsideration, filed the same date, is granted in part and denied in part. Accordingly, the unredacted declarations and attached, unredacted exhibits which CPSD and UCAN submitted in a sealed envelope with the September 25, 2002 motion to the Commission's Docket Office shall be filed under seal, since public, appropriately redacted versions of both declarations and of the attached exhibits are now part of the public record in this proceeding.

2. As modified by the subsequent filings and letters identified in the body of this ruling, the sealed envelope submitted to the Docket Office with CPSD's December 6, 2002 motion to compel shall be filed under seal, since a public, redacted version of the motion is now part of the public record in this

proceeding. Though the public version of the motion contains one excess redaction, found at page 16 of Exhibit 2 to the Witteman declaration, the page has been disclosed elsewhere in the record pursuant to Cingular's prior waiver of confidentiality (page 16 of the document previously received in evidence as Exhibit 17), and so the public record is complete.

3. As modified by the subsequent filing identified in the body of this ruling, CPD's April 25, 2003, motion to file under seal the declaration (and attachments) supporting its opposition to Cingular's April 18, 2003 confidentiality motion is granted. Accordingly, the sealed envelope submitted to the Docket Office with the motion shall be filed under seal since the Witteman declaration and the attached Exhibit 2 are now part of the public record in this proceeding.

4. The information filed under seal pursuant to Ruling Paragraphs 1 through 3, above, shall be filed under seal for two years from the effective date of this ruling. During that period, the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the Assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

5. Since Cingular is the party with the confidentiality interest in the sealed information, if Cingular believes that additional protection is needed beyond that provided in Ruling Paragraph 4, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

Dated October 31, 2003, at San Francisco, California.

/s/ JEAN VIETH

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Jean Vieth  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on Outstanding Motions to File Under Seal (Motions Filed September 25, 2002; December 6, 2002; and April 25, 2003) on all parties of record in this proceeding or their attorneys of record.

Dated October 31, 2003, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.